

Merit Systems Protection Board

§ 1204.21

be supported by a statement or certification, by an officer or authorized representative of the company, that the information in question is confidential commercial information and has not been disclosed to the public.

(e) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, the Board will give a business submitter a reasonable period to provide a detailed statement of any objection to disclosure. The statement must specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act. In addition, in the case of Exemption 4, the statement must state why the information is considered to be a trade secret, or to be commercial or financial information that is privileged or confidential. Information a business submitter provides under this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f) *Notice of intent to release information.* The Board will consider carefully a business submitter's objections and specific grounds for claiming that the information should not be released before determining whether to release confidential commercial information. Whenever the Board decides to release confidential commercial information over the objection of a business submitter, it will forward to the business submitter a written notice that includes:

(1) A statement of the reasons for which the business submitter's objections to the release were not sufficient;

(2) A description of the confidential commercial information to be released; and

(3) *A specified release date.* The Board will forward the notice of intent to release the information a reasonable number of days, as circumstances permit, before the specified date upon which release is expected. It will forward a copy of the release notice to the requester at the same time.

(g) *Notice of Freedom of Information Act lawsuit.* Whenever a requester files a lawsuit seeking to require release of business information covered by paragraph (d) of this section, the Board will notify the business submitter promptly.

(h) *Exceptions to notice requirements.* The notice requirements of this section do not apply when:

(1) The Board decides that the information should not be released;

(2) The information lawfully has been published or otherwise made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The disclosure is required by an agency rule that:

(i) Was adopted after notice and public comment;

(ii) Specifies narrow classes of records submitted to the agency that are to be released under the FOIA; or

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that release of the information could reasonably be expected to cause substantial competitive harm.

(5) The information requested is not designated by the submitter as exempt from release according to agency regulations issued under this section, when the submitter has an opportunity to do so at the time of sending the information or a reasonable time thereafter, unless the agency has good reason to believe that disclosure of the information would result in competitive harm; or

(6) The designation made by the submitter according to Board regulations appears obviously frivolous; except that, in such case, the Board must provide the submitter with written notice of any final administrative release decision within a reasonable period before the stated release date.

§ 1204.15 Records of other agencies.

Requests for Board records that were created by another agency may, in appropriate circumstances, be referred to that agency for discussion or processing. In these instances, the Board will notify the requester.

Subpart C—Appeals

§ 1204.21 Submission.

(a) A person may appeal the following actions, or failure to act by the